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October 29, 2018 12:36 PM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY: ns / \_\_\_\_\_ SCANNED BY: nmw-10/30/18

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BARBARA HAYWOOD,

Plaintiff,

v

LAWRENCE HOUGH, PAUL EAGLE, and  
PETER HUBBARD,

Defendants.

CASE NO. 1:17-cv-508

HON. ROBERT J. JONKER  
MAG. ELLEN S. CARMODY

BARBARA A. HAYWOOD Plaintiff, <i>In Pro Per</i> 723 E. Lansing Street, Apt. 587B Idlewild, Michigan 49642 PH: 231.660.6060	GREGORY R. GRANT (P68808) CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C. Attorney for Defendant HOUGH 310 W. Front Street, Ste. 221 Traverse City, MI 49684 231.922.1888
G. GUSS MORRIS (P32960) CHRISTOPHER J. RAITI (P68600) McGROW/MORRIS, P.C. Attorney for Defendant EAGLE 2075 W. Big Beaver Rd., Ste. 750 Troy, Michigan 48084 248.502.4000	BRANDON WEDDELL (P81494) ASSISTANT ATTORNEY GENERAL Attorney for Defendant HUBBARD Civil Litigation, Employment & Elections Div. P.O. Box 30736 Lansing, MI 48909 517.373.6434

**BARBARA HAYWOOD'S MOTION OBJECTING TO DEFNDANT HOUGH'S  
PROPOSED PRIVILEGE LOG RE: EMAILS AND PHONE CALLS**

Plaintiff Barbara Haywood, pursuant to the Court's order of August 17, 2018 (ECF No 104) files the present motion objecting to Defendant Hough's Privilege Log, submitted to the Court on or about October 10, 2018. And for her motion states as follows:

1. In its August 17, 2018 order, the Court ordered Defendants to review the emails and phone calls and thereafter prepare a privilege log of those discovery items for possible in camera inspection.

2. Defendants have submitted a proposed privilege log for one email between Plaintiff and Walter Jones. Defendants Exhibit 1.

3. Plaintiff objects on the grounds that the subject email is not presented in like form as those emails generally transmitted via JPay Incorporated's Kiosk terminals. JPay Inc. is a proprietary company of Securus Technologies Inc. Defendant Hough's Exhibit 1 does not contain a date identifying when the email was transmitted and received; does not identify the sender and recipient of the email, and does not contain the identification number for the subject email.

4. Defendant Hough has failed to prepare a privilege log or identify which phone calls between Plaintiff and Walter Jones, Defendants intend to use for their defense. The bare excuse that the subject phone calls (approximately 329 in total) between Plaintiff and Walter Jones are difficult to redact due to proprietary reasons is nonsensical.

5. Each of the subject phone calls are only 15 minutes or less in length.

6. Defendant was required to prepare a privilege log of those phone calls likely to be disputed by Plaintiff as being privileged. Any concerns regarding redactions could be resolved after in camera inspection by the Court.

7. During the July 23, 2018 motion hearing, Defendants conveyed to the Court that the subject phone calls were in the possession of the MDOC. Plaintiff therefore states that presenting proprietary concerns at this late hour is likely nonexistent and is merely a reuse to further Defendants' objective of avoiding disclosing what discoverable information they intend to use for their defense.

8. To suggest that the subject phone calls should be a matter of pre-trial motion in limine undermines the Court's order and the objective of the Case Management Order regarding discovery.

9. Moreover, a motion in limine is a preliminary procedure to test the admissibility of evidence believed by the movant to be prejudicial. So, in actuality, Defendant's tactics amounts to nothing more than burden shifting.

10. Plaintiff's position concerning the privileged phone calls has already been argued before this Court, and Plaintiff should not bear any additional pre-trial expense to challenge unidentified privileged phone calls Defendants intend to use at trial.

11. It was Defendants who, through discovery, sought the subject phone calls to determine whether Plaintiff said something different from what she testified to during her deposition; and to discover information that may be possessed by Plaintiff's husband and Walter Jones. As such, this was Defendants' opportunity to identify what discovery information they intended to utilize during trial.

12. Because Defendant Hough failed to adhere to this Court's order to prepare a privilege log and identify the subject phone calls intended to be relied upon during trial, the Court should find that Defendants have waived any and all opportunity to use the recorded phone calls between Plaintiff and Walter Jones.

Respectfully submitted,



BARBARA A. HAYWOOD

Plaintiff, *In Pro Per*

723 E. Lansing Street, Apt. 587B

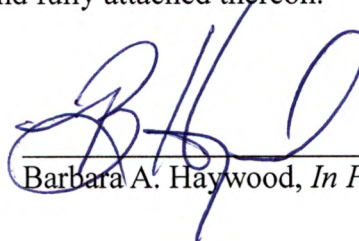
Idlewild, Michigan 49642

PH: 231.660.6060

Dated: October 22, 2018

### CERTIFICATE OF SERVICE

I, **Barbara A. Haywood**, hereby certify that on the 24<sup>th</sup> day of October 2018, a copy of BARBARA HAYWOOD'S MOTION OBJECTING TO DEFNDANT HOUGH'S PROPOSED PRIVILEGE LOG RE: EMAILS AND PNONE CALLS was sent to the following: Clerk of the Court, Magistrate Judge Ellen S. Carmody and all attorneys at their respective addresses of record via U.S. First Class Mail, postage prepaid and fully attached thereon.



Barbara A. Haywood, *In Pro Per*

B. Haywood  
723 E Lansing Apt 587B  
Idlewild, mi 49642-

GRAND RAPIDS MI 495

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